FLORIDA HIGHWAY PATROL POLICY MANUAL

TROOPER	SUBJECT USE OF CONTROL	POLICY NUMBER 10.01
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	APPLICABLE CALEA STANDARDS Section 1.3; 82.3.5	REVISION DATE 01/15/08
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10.01.01 PURPOSE

To establish policy, guidelines and limitations concerning the application of control and the use of deadly force by members of the Florida Highway Patrol.

10.01.02 **AUTHORITY**

- A. The Florida Highway Patrol is granted authority to employ control techniques, including the utilization of force likely to cause death or great bodily harm, in the performance of its official duties in accordance with the provisions of Chapter 776, Florida Statutes.
- B. Chapter 776, Florida Statutes, has set forth the following laws governing the use of such control:
 - Section 776.012, Florida Statutes, Use of Force in Defense of Person A person is justified in using force, except deadly force, against another when and to the extent that the person reasonably believes that such conduct is necessary to defend himself or herself or another against the other's imminent use of unlawful force. However, a person is justified in the use of deadly force and does not have a duty to retreat if he or she reasonably believes that such force is necessary to prevent imminent death or great bodily harm to him or herself or another or to prevent the imminent commission of a forcible felony.
 - Section 776.031, Florida Statutes, Use of Force in Defense of Others A person is justified in the use of force, except deadly force, against another when and to the extent that the person reasonably believes that such conduct is necessary to prevent or terminate the other's trespass on, or other tortious or criminal interference with, either real property other than a dwelling or personal property, lawfully in his or her possession or in the possession of another who is a member of his or her immediate family or household or of a person whose property he or she has a legal duty to protect. However, the person is justified in the use of deadly force only if he or she reasonably believes that such force is necessary to prevent the imminent commission of a

- forcible felony. A person does not have a duty to retreat if the person is in a place where he or she has a right to be.
- 3. Section 776.05, Florida Statutes, Law Enforcement Officers; Use of Force in Making an Arrest A law enforcement officer, or any person whom the officer has summoned or directed to assist him or her, need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. The officer is justified in the use of any force:
 - a. Which he or she reasonably believes to be necessary to defend him or herself or another from bodily harm while making the arrest;
 - b. When necessarily committed in retaking felons who have escaped; or
 - c. When necessarily committed in arresting felons fleeing from justice. However, this subsection shall not constitute a defense in any civil action for damages brought for the wrongful use of deadly force unless the use of deadly force was necessary to prevent the arrest from being defeated by such flight and, when feasible, some warning had been given, and:
 - (1) The officer reasonably believes that the fleeing felon poses a threat of death or serious physical harm to the officer or others; or
 - (2) The officer reasonably believes that the fleeing felon has committed a crime involving the infliction or threatened infliction of serious physical harm to another person.
- 4. Section 776.051, Florida Statutes, Use of Force in Resisting or Making an Arrest; Prohibition.
 - a. A person is not justified in the use of force to resist an arrest by a law enforcement officer who is known, or reasonably appears, to be a law enforcement officer.
 - b. A law enforcement officer, or any person whom the officer has summoned or directed to assist him or her, is not justified in the use of force if the arrest is unlawful and known by him or her to be unlawful.
- 5. Section 776.07, Florida Statutes, Use of Force to Prevent Escape.
 - a. A law enforcement officer or other person who has an arrested person in his or her custody is justified in the use of any force which he or she reasonably believes to be necessary to prevent the escape of the arrested person from custody.

b. A correctional officer or other law enforcement officer is justified in the use of force, including deadly force, which he or she reasonably believes to be necessary to prevent the escape from a penal institution of a person whom the officer reasonably believes to be lawfully detained in such institution under sentence for an offense or awaiting trial or commitment for an offense.

WARNING

Florida Highway Patrol Policy is more restrictive than Florida Statutes. No member is authorized to use deadly force, including in preventing an escape or to capture a fleeing felon, unless the member has reasonable cause to believe that the subject poses an imminent threat of death or serious physical harm to the member or another person.

10.01.03 POLICY

It is the policy of the Florida Highway Patrol to comply with the provisions of law concerning the use of control to affect an arrest, to prevent escape, to apprehend a fugitive or to prevent injury/death to its members and to representatives of the public. Members may resort to the use of control, including the use of force likely to cause death or great bodily harm, only when authorized by law. However, no member is authorized to use deadly force, including in preventing an escape or to capture a fleeing felon, unless the member has reasonable cause to believe that the subject poses an imminent threat of death or serious physical harm to the member or another person.

10.01.04 DEFINITIONS

- A. **AGGRESSIVE BEHAVIOR** mannerisms displayed by a subject which convey by word or act a threat of violence or resistance to lawful authority.
- B. **COMBATIVE BEHAVIOR** actions/mannerisms displayed by a subject that is actively fighting a member or another person.
- C. CONTROL physical measures employed by members to overcome resistance, aggressive/combative behavior or actual or attempted flight while effecting a lawful arrest, including any application of ASR and measures likely to cause death or great bodily harm.
- D. **COUNTERMOVES** techniques that impede a subject's movement toward an officer or others, such as blocking, striking, distracting, kicking, dodging, weaving, redirecting or avoiding, followed by appropriate controlling techniques.
- E. **DEADLY FORCE** force which is likely to cause death or great bodily harm and includes, but is not limited to:
 - 1. The firing of a firearm in the direction of the person to be arrested, even though no intent exists to kill or inflict great bodily harm; and

- 2. The firing of a firearm at a vehicle in which the person to be arrested is riding.
- F. FORCIBLE FELONY treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.
- G. **GREAT BODILY HARM/SERIOUS PHYSICAL HARM** bodily injury that creates a substantial risk of death; causes serious, personal disfigurement; or results in long-term loss or impairment of the functioning of any bodily member.
- H. **IMPACT WEAPONS** weapons designed to establish control over an adversary by means of impact.
- INCAPACITATION TECHNIQUES control methods that are intended to render a subject temporarily disabled. Examples include control measures designed to dislocate joints or produce broken bones.
- J. INTERMEDIATE WEAPONS weapons designed to supplement weaponless control techniques. The definition includes impact weapons, such as the PR-24 baton as well as the Aerosol Subject Restraint (ASR). Intermediate weapons are not designed to supplant firearms and may not provide sufficient control when resistance by means of deadly force is offered.
- K. **PAIN COMPLIANCE** techniques that compel a subject to comply with the lawful commands of an officer through application of controlled pressure to pressure sensitive area(s) of the subject's body.
- L. REASONABLE BELIEF the facts or circumstances the officer knows, or should know, are such as to cause an ordinary and prudent person to act or think in a similar way under similar circumstances.
- M. **RESTRAINT DEVICES** mechanical tools, such as handcuffs, used to restrict a subject's movement and facilitate searching.
- N. **TAKEDOWNS** techniques designed to bring an aggressive/combative subject to the ground in order to limit physical resistance and facilitate installation of a restraint device. An example of this type of control technique would be an outside leg sweep.
- O. **TRANSPORTERS** methods used to gain/maintain control while moving a subject from point to point. Example: bent wrist transporter.

10.01.05 OBJECTIVES

A To ensure that members of the Florida Highway Patrol employ the amount of force that is necessary and reasonable to prevent escape,

- overcome resistance and effect arrests during the performance of their official duties.
- B. To ensure that sworn members receive training and demonstrate proficiency in the use of all weapons authorized by the Florida Highway Patrol before being allowed to carry or use them.
- C. To implement measures which will enhance the integrity of law enforcement operations and contribute to the safety and security of the sworn members of the Division.

10.01.06 RESPONSIBILITIES

- A. The Florida Highway Patrol Training Academy shall exercise responsibility for the administration of defensive tactics and firearms training programs. Academy personnel shall evaluate the content of such programs periodically in order to ensure compliance with current legislation, developments in case law and tactical considerations related to officer safety.
- B. The Bureau of Investigations shall:
 - 1. Create and maintain a repository for all "Use of Control Reports" generated pursuant to the provisions of this directive.
 - 2. Provide a capability for analyzing "Use of Control" incidents and for:
 - a. Identifying members who are involved in three or more "Use of Control" incidents during any twelve month period.
 - b. Compiling annual reports for consumption by Division management which identifies trends, training requirements and other pertinent data concerning the frequency and the types of control utilized by Division members.
 - 3. Oversee/command all "Use of Control" investigations initiated at the instruction of the Director, including:
 - a. Investigations concerning the use of control involving serious injury/death or the unauthorized discharge of a firearm by any Division member.
 - b. Allegations of excessive force raised against members of the Division.

10.01.07 PROCEDURES

Members of the Florida Highway Patrol shall in every instance seek to employ the minimum amount of control required to successfully overcome physical resistance, prevent escapes, and effect arrests. Members' actions must be objectively reasonable in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. However, that objective must be tempered by the need to preserve the safety of the Division's officers. Consequently, members need not wait for injury to occur to themselves or to another before taking appropriate action to prevent it. The decision to employ control must be based upon the totality of circumstances known or reasonably believed by the member at the time such control is used. When danger threatens or when resistance is encountered, members should initiate action that is reasonable and necessary, but expect to be held accountable if excessive force is utilized.

A. TYPES OF CONTROL/APPLICATIONS

- 1. IDENTIFICATION if circumstances permit, members must make their identity known.
- 2. WARNING whenever possible members shall exercise persuasion, advice and/or warning of the impending use of control. Warnings need not specify the type or amount of control to be applied and need only indicate that appropriate control will be utilized if compliance is not obtained. However, members are not expected to place themselves or others in jeopardy in order to deliver such warnings, and if a warning is ineffective, appropriate control should be used to affect the arrest.

3. WEAPONLESS CONTROL TECHNIQUES

- a. Non-Impact Methods firm grip and pain compliance techniques designed for subject come-a-longs. When verbalization proves ineffective, a firm grip and/or pain compliance control methods may be all that is necessary to overcome a subject's resistance.
- b. Impact Control Techniques upper and lower body strikes intended to stop aggressive or combative behavior by the subject.

4. INTERMEDIATE CONTROL METHODS

a. Non-Impact Techniques - the baton may be employed as a control instrument in conjunction with weaponless, nonimpact control procedures to apply pressure to pressure sensitive areas, thereby effecting control.

NOTE: Control instruments should not be used to apply pressure to the head, neck, or throat.

b. Impact Techniques - the baton may be used as a defensive impact instrument when the need for such control is necessary. The baton may be employed in situations where the use of a firearm may not be justified or necessary and the sworn member reasonably believes that the use of weaponless control methods will be ineffective or will jeopardize the safety of the member or another. If in an emergency it becomes necessary to use

- a flashlight or other object as an impact weapon, it shall be employed in the same manner as a baton.
- c. Chemical Agents substances designed to temporarily render a subject incapable of continued resistance.
 Chemical agents should only be directed at the person to be controlled for the amount of time necessary to establish such control.

CANINES

- Canines utilized by the Florida Highway Patrol are trained to apprehend and contain suspects until an officer takes suspects into custody.
- b. Use of control by means of canines will be governed by guidelines set forth in the Florida Highway Patrol canine training curriculum.
- 6. DEADLY FORCE/DISCHARGE OF FIREARMS members shall not discharge firearms or otherwise employ deadly force in the performance of their official duties, EXCEPT under the following circumstances:
 - a. When the member reasonably believes that such action is necessary:
 - (1) To protect the member or another from an imminent threat of death or great bodily harm.
 - (2) To prevent the commission of a forcible felony involving the imminent threat of death or great bodily harm AFTER other control measures have failed or been determined to be impracticable. However, ramming bumping, or attempting to ram or bump a patrol vehicle by a violator will not be construed as constituting justification for the use of deadly force, unless the member reasonably believes that the violator's actions pose a threat of death or serious bodily harm to the member or others.
 - (3) To affect the arrest of felons fleeing from justice, if:
 - (a) Such force is needed to prevent an arrest from being defeated by such flight **and**:
 - (b) Warnings have been given, **and**;
 - (c) The member reasonably believes the fleeing felon poses an imminent threat of death or serious physical harm to the member or others.

- b. To give alarm or summon assistance in an emergency when no other means can be used.
- c. During participation in firearms training, practice or competition.
- d. To kill a dangerous animal or reptile that poses an imminent threat to the member or another.
- e. In accordance with Section 828.05, Florida Statutes, to kill a domestic animal that has been severely injured, but only after the all of the following criteria have been met:
 - (1) The animal is on a public right-of-way.
 - (2) The animal appears to be suffering, cannot be cured or rendered fit for service and seems to be in danger of death.
 - (3) A reasonable effort has been made to locate the owner, the owner's agent, or a veterinarian.

B. PROHIBITED ACTS - FIREARMS

- 1. Warning shots will not be permitted, and no member of the Division may discharge a firearm for the purpose of inducing a fleeing suspect to stop.
- No member shall unnecessarily display or unholster a firearm in the presence of others unless such display is necessary as part of the member's official duties. There shall be no horseplay with firearms, loaded or unloaded, or with any other weapons. It shall be the duty of every member of the Division to use sound, responsible judgment in the handling of firearms in order to prevent accidental discharge that may result in injury, death or damage to property.

C. DUTY TO REPORT/RENDER AID

Whenever a Florida Highway Patrol member employs any physical means to affect control; including the use of weaponless control techniques, intermediate control methods, canines or deadly force; such member shall, unless physically incapacitated:

- 1. Ensure that the subject has been properly restrained or no longer poses an immediate threat to the safety of officers or others.
 - a. Restrained subjects should be placed in an upright or seated position.
 - b. Specifically, heavyset persons, if handcuffed, should not be required to remain in a prone position (lying on chest).

- 2. Determine the physical condition of the person(s) subjected to physical control.
- 3. Render first aid and summon emergency medical assistance if needed.
- 4. Provide assistance to persons subjected to the effects of Aerosol Subject Restraint (ASR), including:
 - a. Placing the subject in front of an air conditioning duct in the front seat of the patrol vehicle.
 - b. Adjusting air conditioner fan speed to provide for the subject's comfort.
 - c. Reassuring the subject that the effects of the substance are temporary and that the care being provided will assist with recovery.
 - d. Monitor the subject for physical conditions that would indicate the possible onset of a medical emergency, including:
 - (1) Profuse sweating.
 - (2) Chest/neck pain.
 - (3) Shallow or restricted breathing.
 - (4) Loss of consciousness.
 - (5) Manifestations of paranoia/panic.
 - (6) Sudden tranquillity after an outburst of bizarre or aggressive behavior.
 - e. If one or more of the medical conditions cited in "d" above are detected, the member shall immediately transport/arrange transportation for the subject to the nearest hospital or medical facility.
- 5. Report each Use of Control:
 - a. Provide immediate notification to the duty supervisor to whom the member is directly responsible or to the District Lieutenant or Shift Commander in the troop in which the incident involving use of control takes place. Such notification shall occur as soon as the situation at the scene has been stabilized.
 - Prepare and submit an Arrest/Notice to Appear Report (DHSMV 60005) if one or more subjects have been taken into custody or an Offense/Incident Report (DHSMV 60009); outlining:

- (1) The details of the incident.
- (2) The identity and address of subjects/witnesses.
- (3) The type of resistance offered and physical control used.
- (4) The necessity for resorting to the use of physical means to control the subject.

Such report shall be submitted to the member's immediate supervisor before the member will be permitted to go off duty.

NOTE: The simple use of handcuffs or application of wrist locks (if the use of such have little or no chance of producing injuries when gaining control over or subduing non-compliant or resisting persons) does not require notification or a written report as outlined in this policy. If, however, such use results in injury or the complaint of injury, members shall write such reports and notify supervisors as outlined.

D. INCIDENTS COVERED BY THE FHP/FDLE MEMORANDUM OF UNDERSTANDING

- 1. The Florida Highway Patrol and the Florida Department of Law Enforcement have entered into a Memorandum of Understanding regarding the investigation of the following types of incidents:
 - a. The shooting of a person by a trooper in the line of duty.
 - b. The shooting of a trooper in the line of duty.
 - c. The infliction of serious bodily harm upon a trooper acting in the line of duty (other than in a traffic crash or other accidental circumstance).
 - d. The death of an arrestee while in the care, custody or control of a trooper; the death of an arrestee shortly after being in the care, custody or control of a trooper; or the death of an intended arrestee during an arrest attempted by a trooper.
- 2. FDLE will assume overall direction and responsibility for all criminal investigations involving the above listed types of incidents.
- 3. FHP will be responsible for any internal or administrative investigations involving the above listed types of incidents.
- 4. Duties of Senior Trooper or Supervisor at the Scene.
 - a. Ensure that the troop shift commander is notified.

- b. Secure the scene. No one is to be allowed into the scene except, emergency medical personnel, crime scene technicians, medical examiner personnel, state attorney personnel, investigating FDLE members and other law enforcement investigators assisting FDLE.
- c. Ensure that physical evidence is preserved.
- d. Identify and separate all law enforcement and citizen witnesses pending the arrival of the FDLE Critical Incident Team.
- e. Coordinate crowd/traffic control with local law enforcement agencies.
- f. Provide assistance to FDLE investigative personnel as requested.
- Duties of the Shift Commander.
 - a. Ensure that an FHP supervisor and emergency medical personnel have been dispatched to the scene.
 - b. Notify the FHP chain of command and the FHP Critical Incident Stress Debriefing Team Leader.
 - Notify the appropriate FDLE regional operations center to request that an FDLE Critical Incident Team be dispatched to the scene.
 - d. Notify the troop Public Affairs Officer, the local Sheriff's Office, State Attorney, and in the event of death, the Medical Examiner. If the incident occurred within an incorporated municipality, the Chief of Police will also be notified.
- 6. Duties of the Troop Commander.
 - a. Notify the appropriate Deputy Director and the Chief of the Bureau of Investigations.
 - b. Assign appropriate supervisory or investigative personnel to conduct an administrative investigation and complete the Supervisory Use of Control Report, if appropriate.
- 7. Duties of the Bureau of Investigations.
 - a. Assign an investigator(s) to assist FDLE with any criminal investigation.
 - b. While assisting FDLE, Bureau of Investigations Personnel will:

- (1) Serve as a member of the FDLE Critical Incident Team and assist FDLE with the investigation.
- (2) Serve under the direction of FDLE supervisory personnel during the term of the investigation.
- (3) While assigned to the FDLE Critical Incident Team, a troop investigator will not be involved in any internal or administrative investigation conducted by FHP.
- 8. FHP may release an initial press statement acknowledging an incident, reporting the status of the trooper(s) involved in the incident, and making reference to the investigative process. Press statements related to the investigation will be provided to the media by FDLE. Media inquiries concerning to investigation are to be referred to FDLE.

E. USE OF CONTROL INCIDENTS NOT COVERED BY THE FHP/FDLE MEMORANDUM OF UNDERSTANDING

- All use of control incidents that result in injury to any participant or the discharge of a firearm that are not covered by the FHP/FDLE Memorandum of Understanding will be investigated by FHP personnel.
- 2. Duties of the On-Duty/On-Call Supervisor:
 - a. Arrange for protection/processing of the crime scene (if appropriate).
 - b. Arrange to have witnesses identified/detained (if applicable).
 - c. Notify the Shift Commander of the incident.
 - d. Respond to the scene/hospital/jail to review the situation.
 - Conduct a preliminary investigation, document findings on the Supervisory Use of Control Report (HSMV 60215) and submit such report, including statements from witnesses, to the troop supervisory staff prior to concluding his/her tour of duty.
- 3. Duties of the Troop Commander:
 - a. Arrange for the investigation to be conducted by the duty supervisor or other personnel consigned to the troop.
 - b. Arrange for a review of the incident by members of the troop supervisory staff and for appropriate follow up action.
- F. Subsequent to review at the troop level, the Troop Commander will forward all reports required by this policy to the Bureau of Investigations.

- G. SHOOTING INCIDENTS RESULTING IN INJURY OR DEATH: In the event of a shooting incident resulting in injury or death where a member discharged the weapon, the member shall be immediately placed on administrative leave for a period of three days in order to remove the member from the associated trauma. Under no circumstances will the leave be construed as a disciplinary action. A member of the troop Critical Incident Stress Debriefing Team shall make every effort to reduce the effects of post-shooting trauma on the member including, but not limited to, referral to counseling or other crisis intervention assistance. A supervisor on the scene shall promptly relieve the member of the weapon used in the shooting for investigation purposes and shall at that time give the member a substitute weapon. Further actions will be taken, if needed, after a determination of the facts is made.
- H. USE OF CONTROL REVIEW SYSTEM: This system is designed to supplement existing departmental programs created to identify and assist employees with job stress and/or performance problems. The review of the Supervisory Use of Control Report should be used by supervisors as another resource in determining if job stress or performance problems exist. It is intended to serve as a resource for evaluating and providing guidance to the employee.
- I. DIVISION STANDARD: This directive is intended for Division use only. Violations shall serve as a basis for administrative sanctions only. Violations of law shall form the basis for any civil or criminal actions brought in the appropriate judicial setting.

10.01.08 REGULATIONS

- All members of the Florida Highway Patrol shall maintain at least one Division approved intermediate weapon on their person at all times while in uniform and outside the confines of an official vehicle or Division installation. This regulation shall be binding upon all personnel in uniform whether on-duty or off-duty.
- B. The Aerosol Subject Restraint (ASR) is the primary intermediate weapon issued by the Florida Highway Patrol, owing to the capability of this substance to incapacitate without inflicting serious, lasting injury/discomfort to an assailant. Members who by virtue of a pre-existing medical condition are unable to complete ASR training will be required to maintain certification with and carry the PR-24 as an alternative in accordance with the provision of "A" above.
- C. Members seeking to be excluded from ASR training shall be required to submit a statement from a physician, outlining the medical condition/reason(s) that preclude the member's participation. The Division may, at its option, also require such personnel to submit to an examination by a physician under contract to the Agency in order to ensure that the malady claimed by the member does not diminish his/her capacity to serve as a law enforcement officer.